

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of J. I. M. MOSER, Minor.

UNPUBLISHED

August 14, 2014

No. 320235

Cass Circuit Court

Family Division

LC No. 04-000152-NA

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Before: M. J. KELLY, P.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

Respondent-father appeals the order terminating his parental rights to the minor child under MCL 712A.19b(3)(g) (failure to provide proper care and custody). We affirm.

“In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met.” *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). “We review the trial court’s determination for clear error.” *Id.* “A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made.” *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

The trial court did not clearly err by terminating respondent’s parental rights under MCL 712A.19b(3)(g), which permits termination when “[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.”

Respondent was not providing proper care and custody in August 2012 because he was using methamphetamines in the home, which was in deplorable condition. During the proceeding, it was discovered that the minor child was significantly traumatized as a result of domestic violence that he witnessed between his mother<sup>1</sup> and respondent. Even though respondent admitted to the past history of domestic violence and was advised to cease contact with the minor child’s mother, he continued to have contact with her in the months leading up to

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<sup>1</sup> The minor child’s mother released her parental rights to the minor child during the proceeding, and she is not a party to this appeal.

termination. In June 2013, respondent lied to a service provider about the history of domestic violence, and he minimized the fact that the child's mother occasionally spent the evening at his home at the time of termination. Further, during the 16-month proceeding, respondent failed to take full responsibility for his role in the child's being taken into care. He lacked insight into how he had harmed the minor child in the past by exposing him to neglect, domestic violence, and substance abuse; and, as a result, there were concerns that respondent could not physically or psychologically parent the child safely. Moreover, respondent was unable to provide care to the minor child at the time of termination because he was unemployed. Additionally, the record supports that concerns regarding respondent's substance abuse were not fully resolved. Respondent participated in therapy groups from October 2012 through June 2013. Between June 2013 and December 27, 2013, he did not attend treatment or Narcotics Anonymous (NA) meetings. Respondent resumed attending a therapy group and began NA meetings after the termination petition was filed. He lacked a relapse prevention plan at the time of termination, and there was concern that he lacked insight as to why he needed to remain sober in the future. Further, although it was believed that the minor child's mother continued to abuse substances during the proceeding, respondent allowed her to stay with him during the proceeding. The record clearly supports that respondent could not provide proper care and custody at the time of termination. See MCL 712A.19b(3)(g).

We reject respondent's argument that he should have been given more time to participate in services so that he could have provided proper care and custody to the minor child in the future. The record clearly establishes that there was "no reasonable expectation that [respondent would] be able to provide proper care and custody within a reasonable time considering" the child's age. See MCL 712A.19b(3)(g). Respondent put his relationship with the minor child's mother before the minor child, and there is no indication on the record that respondent would develop the necessary insight and accountability required to properly parent within a reasonable time. There was also no evidence to support that he would locate stable employment within a reasonable time. At the time of termination, the minor child was 10 years old and had been in care for 16 months. He required permanency and stability given his emotional issues. The trial court's finding that termination of respondent's parental rights was proper pursuant to MCL 712A.19b(3)(g) does not leave us with a definite and firm conviction that a mistake has been made. *In re HRC*, 286 Mich App at 459.

In reaching this conclusion, we also reject respondent's argument that petitioner failed to provide him with timely services to address his parenting skills. This issue is unpreserved, *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012), and we review for plain error affecting substantial rights, *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

Respondent argues that, because petitioner failed to provide him with timely services to improve his parenting skills, he was unable to make sufficient progress. The record establishes that respondent possessed basic parenting skills, but was unable to follow through and implement them. Before he could make meaningful change, he had to accept responsibility for the noted problems. Throughout the proceeding, he never fully accepted responsibility. He only made limited progress despite participating in 15 months of weekly counseling with his counselor. Although he was not referred to counseling with Maria Johnson until 10 months into the proceeding and was not provided a parenting assessment and education with Mary Ann Geiser until 12 months into the proceeding, it is unlikely that respondent would have demonstrated

improvement if services with Johnson and Geiser had been provided to him earlier in the proceeding when he never fully accepted responsibility in order to start making meaningful changes. Respondent has failed to establish plain error. *Rivette v Rose-Molina*, 278 Mich App 327, 328-329; 750 NW2d 603 (2008).

Respondent also argues that reasonable efforts were not made because he was not provided with a recommended intensive parenting class. However, this recommendation was made less than two months before termination, and the record supports that respondent would have had to regain custody of the minor child before the service could be provided. Respondent has thus failed to establish plain error. *Id.* Furthermore, given the overwhelming evidence for termination as a result of respondent's failure to establish that he could maintain long-term sobriety, his lack of employment, and his continued involvement with the minor child's mother, he cannot establish that his substantial rights were affected. *Id.*

Respondent also argues that petitioner violated the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.*, by failing to tailor the service plan to his cognitive limitations. This issue is waived. *In re Terry*, 240 Mich App 14, 26 n 5; 610 NW2d 563 (2000). Because waiver extinguishes any error and precludes appellate review of that issue, *Landin v HealthSource Saginaw, Inc.*, \_\_ Mich App \_\_, \_\_; \_\_ NW2d \_\_ (Docket No. 309258, issued June 3, 2014), slip op at 13, respondent's "sole remedy is to commence a separate action for discrimination under the ADA." *In re Terry*, 240 Mich App at 26. Nevertheless, we have considered respondent's argument and find that there is simply no evidence on the record to support that respondent's alleged cognitive limitations interfered with his ability to benefit from services.

Finally, respondent argues that the trial court improperly determined that termination of his parental rights was in the minor child's best interests. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). We review that best interests finding for clear error. *In re HRC*, 286 Mich App at 459. In *In re VanDalen*, 293 Mich App at 141, when reviewing best interests, this Court looked at evidence that the children were not safe with the respondents, that they were thriving in foster care, and that the foster care home could provide stability and permanency. We have also considered the respondent's meaningful contact with the children and the family bond between the respondent and the children when considering best interests. *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004).

Here, respondent and the minor child had a peer-like relationship, and the minor child felt responsible for caring for respondent. Moreover, the minor child was significantly traumatized by the domestic violence and substance abuse that he was exposed to while in respondent's care. He was diagnosed with disruptive behavior disorder and adjustment disorder with mixed anxiety and depression at the beginning of the proceeding. Respondent was unable to address the minor child's emotional needs at the time of termination. Although the minor child reported that he wanted to return to respondent's care at certain points during the proceeding, it was believed that this was because he felt responsible for ensuring that domestic violence was no longer occurring between his mother and respondent. Expert testimony established that the minor child would likely become more aggressive and his mental well being would "deteriorate" if he were returned

to respondent. Although respondent loved the minor child, the relationship was simply not healthy for the child. See *id.*

In order for the minor child to become a functional adolescent and adult, he required stability, support, and positive attention. There is no indication that respondent could provide this at the time of termination or within a reasonable time in the future. Further, while in care, the minor child had lost weight and attended therapy. The foster mother was committed to understanding the minor child's needs and would provide him with emotional availability. The foster parents were also interested in adopting both the minor child and his half sister. See *In re VanDalen*, 293 Mich App at 141. The trial court did not clearly err in finding that termination of respondent's parental rights was in the minor child's best interests. *In re HRC*, 286 Mich App at 459.

Affirmed.

/s/ Michael J. Kelly  
/s/ David H. Sawyer  
/s/ Joel P. Hoekstra